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THE DISTRICT OF COLUMBIA  
BEFORE  
THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	)	
CONNIE GREGORY	)	OEA Matter No. 1601-0124-12
Employee	)	
v.	)	Date of Issuance: September 13,
	)	2012
DISTRICT OF COLUMBIA DEPARTMENT	)	Lois Hochhauser, Esq.
OF YOUTH REHABILITATION SERVICES	)	Administrative Judge
Agency	)	
Cherie Cooley, Esq., Agency Representative	)	
Connie Gregory, Employee, <i>pro se</i>	)	

**INITIAL DECISION**

INTRODUCTION AND PROCEDURAL BACKGROUND

Connie Gregory, Employee herein, filed a petition with the Office of Employee Appeals (OEA) on June 28, 2012, appealing the decision of the District of Columbia Department of Youth Rehabilitation Services, Agency herein, to remove her from her position as Youth Development Representative, effective June 26, 2012. The matter was assigned to me on August 7, 2012.

In her petition, Employee stated that she was serving in a probationary status at the time of her removal. Agency also contended that Employee was serving in probationary status at the time on her removal, in its response. Therefore, on August 10, 2012, I issued an Order directing Employee to submit legal and/or factual argument by August 27, 2012, regarding her employment status and this Office's jurisdiction. In the Order, I notified Employee that employees have the burden of proof on all jurisdictional issues. Employee was cautioned that her failure to respond to the Order could constitute a failure to prosecute and could also be considered as concurrence that this Office lacks jurisdiction to hear the matter. The parties were notified that unless they were notified to the contrary, the record would close on August 27, 2012. The Order was sent to Employee at the address listed as her mailing address in her petition, by first class mail, postage prepaid. It was not returned to OEA and is presumed to have been received by Employee in a timely manner.

JURISDICTION

The jurisdiction of this Office was not established.

ISSUE

Should the petition be dismissed?

### FINDINGS OF FACT, ANALYSIS AND CONCLUSIONS

Pursuant to OEA Rule 628.2, 59 D.C. Reg. 2129 (March 16, 2012), Employee has the burden of proof on the issue of jurisdiction. Employee must meet this burden by a “preponderance of the evidence” which is defined in OEA Rule 628.1, as that “degree of relevant evidence, which a reasonable mind, considering the record as a whole, would accept as sufficient to find a contested fact more probably true than untrue”. Employee has the burden of proof regarding her employment status since it is a jurisdictional issue. Both Employee and Agency asserted that Employee was in probationary status at the time of her removal. Chapter 8, Section 814.3 of the District Personnel Manual provides that termination during the probationary period cannot be appealed to this Office. *See also* 6-B DCMR Sections 1600 *et seq.* An appeal to this Office by an employee serving in a probationary status must therefore be dismissed for lack of jurisdiction. *See, e.g., Day v. Office of the People’s Counsel*, OEA Matter No. J-0009-94, *Opinion and Order on Petition for Review* (July 10, 1995). Employee’s failure to respond may be viewed, as stated in the Order, as an admission that this Office lacks jurisdiction of the appeal. In any event, I conclude that Employee did not meet her burden of proof on the issue of jurisdiction, and that the petition should be dismissed for that reason.

Employee’s failure to respond to the Order provides an additional basis to dismiss this petition. In accordance with OEA Rule 621.3, 59 DCR 2919 (March 16, 2012), a petition for appeal may be dismissed with prejudice when an employee fails to prosecute the appeal. *See, e.g., Employee v. Agency*, OEA Matter No.1602-0078-83, 32 D.C. Reg. 1244 (1985). Failure to prosecute an appeal, includes the failure to submit “required documents after being provided with a deadline for such submission” pursuant to OEA Rule 621.3(b). In this matter, Employee failed to respond to the August 7, 2012 Order which contained a specific deadline and which informed her of the consequences of not responding to the Order. The Order was sent to Employee at the address that she identified as her home address in her petition. It was sent by first class mail, postage prepaid. It was not returned by the U.S. Postal Service and is presumed to have been received by Employee in a timely manner. I conclude that Employee’s failure to prosecute her appeal provides another basis upon which to dismiss this petition.

In sum, for the reasons stated, the Administrative Judge concludes that Employee failed to meet her burden of proof on the issue of jurisdiction based on her status as a probationary employee and also failed to prosecute her appeal; and that for these reasons, this petition for appeal should be dismissed.

### ORDER

It is hereby ORDERED that the petition for appeal is DISMISSED.

FOR THE OFFICE:

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LOIS HOCHHAUSER, Esq.  
Administrative Judge